

**WHOLESALE WATER SUPPLY AGREEMENT
Between Alderwood Water & Wastewater District
and City of Edmonds**

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1 **AGREEMENT BETWEEN**
2 **ALDERWOOD WATER & WASTEWATER DISTRICT**
3 **AND CITY OF EDMONDS**
4 **FOR WATER SUPPLY**
5

6 This Wholesale Water Supply Agreement ("Agreement") between the ALDERWOOD
7 WATER & WASTEWATER DISTRICT, a special purpose municipal corporation (the
8 "District,") and CITY OF EDMONDS (the "Customer") (individually a "Party" and collectively
9 the "Parties") for the purposes set forth herein.
10

11 WHEREAS, the District and the Customer are each authorized under the law of the
12 State of Washington to supply potable water to their retail customers and to enter into
13 wholesale contracts for the purchase and sale of wholesale water supply; and
14

15 WHEREAS, the District and the Customer desire to enter into an agreement wherein
16 the District sells wholesale water to the Customer at a wholesale water rate that will adequately
17 compensate the District for those current and future costs attributable to supplying wholesale
18 water to the Customer;
19

20 NOW, THEREFORE, The District and the Customer agree as follows:
21

22 **SECTION I. - WATER SUPPLY**
23

24 The District agrees to sell to the Customer and the Customer agrees to purchase from
25 the District up to the daily quantity of water shown in Exhibit "A" according to the terms and
26 conditions of this Agreement. The water shall be delivered to a Master Meter at a point in or
27 immediately adjacent to a site as depicted on Exhibit B and E. The District shall be the
28 Customer's primary source of water; provided that the Customer may use any existing
29 alternate source connections and re-use water as sources of water supply.
30
31

SECTION II. - DEFINITIONS

As used in this Agreement, unless the context clearly indicates otherwise, the following words and phrases shall mean:

"Administrative Time" means the District's administrative costs incurred to maintain, operate and repair the Wholesale Facilities.

"Cubic Foot" means a unit of measurement of water equal to 7.48 gallons. The term "CCF" shall mean 100 cubic feet of water.

"Distribution Main" means any water main owned and operated by either the District or by the Customer as part of its Retail Water System.

"District Peak Day Water" means the 24-hour maximum usage day measured in million gallons pumped from the Everett System through the three pump stations operated by the District.

"Everett Supply Contract" means the current agreement between the City of Everett and the District for water supply, dated January 28, 2005, and any future amendments thereof.

"Master Meter" means the measuring device installed to measure the volume of water supplied to the Customer by the District.

"Peak Day Water" means the 24-hour maximum usage day measured in million gallons during a calendar year.

"Regional Facilities" means District assets as identified on Exhibit C that are necessary to provide service to all District retail and wholesale customers.

"Retail Water System" means that system owned and operated by the District or by the Customer composed of Distribution Mains and appurtenances used for receiving a supply of water and distributing it directly to the District's or the Customer's retail customers.

"Service Connections" means those separate connections between a Retail Water System and a retail customer.

"Service Meters" means the meter or measuring device installed on a service line or Service Connection for the purpose of measuring the volume of water supplied to a retail customer.

"Terminal Storage Reservoir" means a storage reservoir used primarily to provide reserves against transmission failure from the supply, supply or pumping failure, pump control storage to balance and economically operate the supply pumps and which permits a reduced sizing in the supply transmission and pumping system to the terminal storage reservoirs.

"Transmission Main" means a pipe owned and operated by the District primarily used for carrying water from a source (currently the Everett Water System) to a Retail Water System that normally has limited or no Service Connections.

"Wholesale Customer" means a customer who purchases water from the District according to the terms and conditions of this Agreement or an agreement with substantially similar terms and conditions, delivered through the Wholesale Facilities.

"Wholesale Facilities" means current assets, identified on Exhibit B, and future assets hereafter added to an amended Exhibit B, owned and operated by the District that are necessary to supply water to the Wholesale Customers in this Agreement. These Wholesale Facilities may also be part of the Regional Facilities.

"Wholesale Water Cost" means all of the costs incurred by the District to supply water to Wholesale Customers, including

- (1) The cost of purchased water, which is the annual amount (U.S dollars) paid by the District for water supplied to the Wholesale Customers under either the Everett Supply Contract or any other agreement for the purchase of water to supply the Wholesale Customers.
- (2) Maintenance and operation costs ("Wholesale M&O costs"), which are costs incurred by the District to maintain, operate and repair the Wholesale Facilities, including Administrative Time, cost of materials and supplies, and the full cost of labor attributable to serving the Wholesale Customers.
- (3) "Power Costs," which are the electrical and other fuel charges associated with operating the Wholesale Facilities.
- (4) "Existing Wholesale Debt," (Principal + Interest) which is the existing bonded debt service and debt obligations of the District attributable to serving the Wholesale Customers, including principal and interest payments.
- (5) "Future Wholesale Debt Service," (Principal + Interest), which is future debt issued by the District to finance capital improvements and infrastructure, attributable to serving the Wholesale Customers, including principal and interest payments.
- (6) "Cash (Rate) Funded Wholesale Facility Improvements," ("CFI") which is that revenue component of the Wholesale Water Rate used, in whole or in part, to cash

fund Wholesale Facilities.

(7) "Other Program Funding," which includes costs incurred by the District that benefit Wholesale Customers but are not otherwise included in the Wholesale Water Rate.

(8) "Quantity of Water Supplied," which is the prior year's total of water supplied to the Wholesale Customers (CCF) as measured by all Master Meters, plus or minus any adjustments for individual services of the Customer or District connected upstream or downstream, respectively, of the Master Meters.

(9) "District Finance Option," which is a revenue component of the Wholesale Water Rate used in whole or in part to fund capital improvements where bonds or CFI are impractical or are not available.

"Wholesale Water Rate" means the cost of water to the Wholesale Customer in dollars per hundred cubic feet (CCF).

"Wholesale Water System" includes the Wholesale Facilities and the Retail Water System of any Wholesale Customer and of the District.

SECTION III. - FUTURE FACILITY ACQUISITIONS

The Customer and the District agree that at such times in the future that the Customer extends its corporate boundaries to include parts of the District's service area, the Parties will benefit from having a process in place to determine what will become the property of the Customer and what will remain the property of the District. Recognizing that Chapter 35.13A RCW is the governing basis for such a process, the fact that the District provides service to seven cities and the county's unincorporated area adds complexity to the process which requires more process detail to insure that both the Customer and the District can fulfill their respective obligations for service. Therefore, the following process shall define the requirements and responsibilities of each party.

The Parties agree that the facilities and infrastructure that are necessary for supporting the District's regional customers ("Regional Facilities") are identified herein. In areas proposed for annexation, where the potential exists for the transfer of ownership of any portion of the Regional Facilities, it is agreed that the Regional Facilities shall remain in the ownership and

control of the District. Nothing herein shall be interpreted to waive any right or obligation under Washington law as the same exists or shall hereinafter be created.

If the Customer initiates the process to consider annexation of additional areas that are located within the District, the Customer will notify the District in writing of its intent. After receiving Customer's notice of intent to annex, representatives of the Customer and the District shall meet at a mutually agreeable time and place to review the proposed annexation area with regard to its potential impact on water and sewer service. Discussions between the Customer and the District shall include a preliminary assessment of service continuing with the District and/or the potential of facility transfer to the Customer. The preliminary assessment should include a review of the extent of modifications that would be required to transfer the utilities to the Customer, including the possibility for relocation of master meters and realignment of existing distribution utilities.

Within 30 days following the initial meetings and completion of the preliminary assessment of utility options, the Customer agrees to notify the District in writing of its intent regarding which Party should be the service provider to the proposed annexation area.

If the Customer provides notice of its intent to further consider Customer ownership of certain utilities owned by the District within the proposed annexation area, the Customer and the District may agree to participate in a more detailed study in order to determine the extent of facility modifications and costs impacts associated with the transfer of the utilities in the annexed areas. The cost of any such study shall be split equally between the Parties.

After the Parties' review and analysis of the additional data provided by the detailed study, if the Customer notifies the District in writing of its decision to assume ownership of the utilities, a plan will be developed jointly for defining the steps necessary to complete the transfer of ownership. The plan will include design and specifications for any required infrastructure improvements, transfer of accounts, and final agreements on costs involved including costs related to outstanding bond indebtedness. The costs associated with the preparation of this plan shall be split equally between the Parties.

Once the plan (including the allocation of construction costs between the Parties) has been agreed to by the Customer and the District, the District will prepare the final contract plans and specifications for the required improvements, and will administer the contract for the construction.

157 Upon completion of the required improvements and payment to the District of agreed
158 costs associated with the assumption of the utilities, including all associated construction costs,
159 the District will transfer accounts, assign any existing easements, and provide the necessary bills
160 of sale for the transferred utilities.

161 The parties agree that the contract may be reopened if the assumption will affect rates. If
162 the process leads to facility assumption, the parties agree that the District would be provided
163 three (3) years to make the changes necessary to allow for transitional impact adjustments by the
164 District.

165 In the event the Parties are not able to agree on the plan, the amounts to be paid by the
166 Customer for the transfer of facilities, or any other disputes relating to the Customer's
167 acquisition of the District's facilities, the matter shall be referred to mediation for resolution in
168 accordance with Section XVII (Dispute Resolution). If the matter is not resolved through
169 mediation, the Parties shall proceed in accordance with the dispute resolution procedures set
170 forth in Section XVII.

171 172 **SECTION IV. - CONTINUITY OF SERVICE** 173

174 Except as otherwise provided, the District's supply of water to the Customer shall be
175 continuous. In the event of a general emergency or water shortage affecting the District, the
176 District and the Customer shall implement necessary water conservation measures. Because
177 the District and the Customer have critical customers, the District shall consult with the
178 Customer regarding water allocations. General restrictions placed upon deliveries to the
179 Customer shall be made according to the District's most recent Emergency/Drought
180 Response Plan. In the event of localized emergency problems, temporary service
181 interruptions may result.

182 The District may have to implement emergency Wholesale Water System
183 conservation measures to meet an emergency condition. The Customer shall assist and
184 support such emergency conservation measures.

185 If the District determines that interruptions and reductions are necessary or reasonable in
186 case of system emergencies, the District shall provide oral notice to the Customer and may
187 temporarily interrupt or reduce deliveries of water to the Customer. Except in cases of

188 emergency, and to avoid unreasonable interference with the Customer's operations, the District
189 shall give the Customer at least fourteen (14) calendar days notice of any proposed interruptions
190 or reduction in service, the reason therefore, and the probable duration thereof, including any
191 interruptions or reduction in services that will be caused by the installation of equipment, repairs,
192 replacements, investigations, inspections or other maintenance performed by the District on its
193 water system or those parts of the system supplying the Customer.

194 The City of Everett currently holds water rights regulated by the State Department
195 of Ecology and an approved Water System Plan regulated by the State Department of
196 Health that enables the City of Everett to perform the Everett Supply Contract. Said water
197 rights and plan currently authorize the District to supply City of Everett water to Customer
198 under this Agreement and consistent with the terms of the Everett Supply Contract.
199 Customer acknowledges and agrees that any interruption or restriction of said authorization
200 could result in the curtailment, interruption or reduction in the District's service to
201 Customer, the declaration of an emergency, or other measures reasonable under the
202 circumstances.

203 In the event of any of the foregoing or otherwise, the District shall have no
204 obligation whatsoever to obtain and furnish a substitute supply of water and Customer may
205 obtain and use any alternate lawful source of water supply including re-use water as
206 substitute water supply. The District shall cooperate with the Customer and use its best
207 efforts to assist Customer in obtaining an alternative source(s) of water supply. Nothing
208 herein shall be interpreted to waive any right or obligation under Washington law as the
209 same exists or shall hereinafter be created.

211 SECTION V. - OPERATIONAL EFFICIENCY

212

213 The Everett Supply Contract includes a rate component of peak to average day flow
214 that affects the District and the Customer. Therefore, as a material element of this
215 Agreement, the Customer shall track during the high water demand period June through
216 August the operational control components of its Retail Water System, including, at a
217 minimum, reservoir storage capacity and flow controls, and provide the data collected to
218 the District in accordance with procedures and on a schedule as established by the

Wholesale Committee.

SECTION VI. - WHOLESALE COMMITTEE

The District shall establish and staff, and the Customer shall participate in, a wholesale committee ("Wholesale Committee") composed of the District and each Wholesale Customer. Each Wholesale Customer shall designate in writing a representative to serve on the Wholesale Committee. A representative may be replaced by a written designation of the committee member. The Wholesale Committee shall have the powers and authority as set forth below:

1. Advisory Powers and Authority. The Wholesale Committee shall review and advise the District on the following topics or issues:

- a. Proposed wholesale rate changes, including Administrative Time;
- b. Proposed multi-year wholesale capital improvement plans;
- c. Coordination with the District on day-to-day operations relating to high water demand;
- d. Proposed bond issues for wholesale system capital improvements;
- e. Changes in District standards that would apply to wholesale improvements;
- f. Proposed modifications to the Everett Supply Contract;
- g. Proposed regulatory changes that could potentially impact wholesale customers;
- h. Day-to-day operational issues and coordination efforts; and
- i. District Finance Option

2. Approval Powers and Authority. The Wholesale Committee shall review and approve of the following topics:

- a. The District's Emergency/Drought Response Plan;
- b. Limits on cash funded wholesale system capital improvements; and
- c. "Other Program Funding" as defined and used in this Agreement.

Approval will require a majority vote of the Wholesale Customers plus District.

The Wholesale Committee shall meet annually by the 15th of March to review the proposed wholesale rates and, as necessary, to address the other topics as outlined above. A meeting may be called by any member of the Wholesale Committee. The Wholesale

Committee shall evaluate each Wholesale Customer's operational efficiency by the end of each year and provide a report and recommendation to the District's Board of Commissioners on the summarized data of the Wholesale Customers' tracking of high water demand to identify potential efficiency measures to be implemented under the state-mandated Water Use Efficiency Rule. Each Wholesale Customer shall receive a copy of the report.

SECTION VII. - MASTER METER

All water delivered by the District to Customer shall be measured by a Master Meter. All Master Meters, including vaults and appurtenances, will be owned, maintained, repaired, replaced and upgraded by the District and the cost thereof included in the Wholesale Water Cost. The District shall own all facilities from the connection to the District pipeline to the upstream flange of the valve downstream of the Master Meter. The cost of a new Master Meter requested by the Customer, including appurtenances and installation, shall be paid by the Customer. Relocation of a Master Meter necessitated by the Customer shall be paid by the Customer.

The District shall establish standards for Master Meters, including appurtenances and access to flow data. Access to the Master Meter and the flow records shall be made available to the Customer upon request. The Master Meter shall be checked by the District on a schedule and for accuracy per the manufacturer's recommendation and the cost thereof included in the Wholesale Water Cost. Either the District or the Customer may request additional tests. The costs of additional tests shall borne equally, if both Parties agree to the test; otherwise, by the Party requesting the test, unless the meter is not performing within the manufacturer's specification, whereupon the benefited Party shall pay for the test. Any adjustment to charges for water supplied shall be determined by the average water use of the three prior years for the same period, unless some other method is agreed upon. Either a credit or an additional billing calculated at the applicable Wholesale Water Rate shall accrue to the appropriate party. If review of the meter records does not establish when the change in accuracy occurred, the period of adjustment shall be one-half of the period since the last meter calibration, not to exceed 12 months.

281 **SECTION VIII. - AREA OF USE**

282
283 The Customer shall not furnish service under any terms to services or systems other than
284 those within its approved service area as defined within its Water Comprehensive Plan without
285 first receiving written approval of the District. The Customer currently serves other water
286 suppliers or the service area of such suppliers by agreement. Those agreements are identified on
287 Exhibit D and continued service to those suppliers is hereby approved by District.
288

289 **SECTION IX. - WATER QUALITY**

290
291 The water delivered by the District to the Master Meter shall comply with state and
292 federal standards for drinking water and be of the same standard and quality normally
293 delivered to the District's other customers. The District shall not be liable for any
294 degradation of water quality and resulting damages that may occur beyond the Master
295 Meter, including liability for acts of sabotage. Customer shall operate its system in
296 conformance with law and in a manner which does not impair the water quality of the
297 "Wholesale Water System."
298

299 **SECTION X. - SUPPLY TO DISTRICT-OWNED SERVICES TRANSMITTED**
300 **THROUGH CUSTOMER MAINS**
301

302 The District shall have the right to continue to serve its Retail Water System with
303 water transmitted through the Customer's Master Meter and Retail Water System. Every
304 two months, the District shall read meters in that portion of the District's Retail Water
305 System supplied through Customer's Master Meter and Retail Water System. The volume
306 of water shown by meter reading shall be deducted from the total Master Meter reading for
307 the month in which these meters are read, plus 25% added for meter losses, flushing, leakage
308 and other authorized unmetered usage.
309
310
311
312

313 **SECTION XI. - WHOLESALE WATER RATE**

314
315 Wholesale Customers shall pay a Wholesale Water Rate that shall be adjusted annually
316 on April 1 and shall be effective on that date. The Wholesale Water Rate shall recover the
317 District's Wholesale Water Cost computed by the following formula:

318
319
$$R = E + \frac{M + P + (ED + FD) + CFI + DFO + O}{Q}$$

320 Q

321 *Where:*

322 R = Wholesale Water Rate (\$/CCF) computed to the nearest ten-thousandth of a
323 dollar

324 E = The District's cost of Purchased Water (\$/CCF)

325 M = Wholesale M&O Costs for the prior calendar year, excluding Power Costs

326 P = Power Costs for the prior calendar year [Wholesale-Related Portion Only]

327 ED = Existing Wholesale Debt including Principal + Interest

328 FD = Future Wholesale Debt Service including Principal + Interest

329 CFI = Cash (Rate) Funded Wholesale Facility Improvements

330 DFO = District Finance Option

331 O = Other Program Funding as may be deemed appropriate by the Wholesale
332 Committee

333 Q = Quantity of Water Supplied (CCF) in the prior calendar year measured by
334 the Wholesale Customers' Master Meters

335
336 In determining the Wholesale Water Rate, the District shall be governed by the following
337 principles:

- 338
339 1. Revenue recovery for debt service shall be based upon the debt service
340 (payment) schedule associated with each debt issue. Whenever the District issues re-
341 funding debt, it shall analyze the refunding issue to determine an equitable allocation of
342 principal and interest to the Wholesale Water Rate. The Wholesale Committee shall be
343 convened to review the allocation for either a new debt issue or a refunding issue.

344
345 2. In the year in which the District proposes to issue a new long-term debt
346 instrument to finance, in whole or in part, the construction of or improvements to
347 Wholesale Facilities, the cost attributable to Wholesale Facilities, including projected
348 principal, interest, reserve payments, and debt service, incurred by the District for that
349 year shall be included in the Wholesale Water Rate. The cost of such debt shall be
350 allocated to the Wholesale Customers, over the life of the debt issue, according to the
351 specific use of proceeds from that debt issuance. At the end of the year, and after the
352 debt has been issued, the debt issue is considered "Existing Wholesale Debt" for purposes
353 of establishing wholesale water rates in subsequent years.
354

355 3. Whenever financially feasible, debt service coverage shall be met by the
356 District's overall financial operations (retail and wholesale). If debt service coverage
357 cannot be met by the District's overall financial operations, then the Wholesale Water
358 Rate shall be adjusted to include a component sufficient to meet the specific debt service
359 coverage covenants.
360

361 4. Every fifth (5) year commencing in the year 2015, the District shall re-
362 determine Wholesale M&O Costs for the purpose of setting the Wholesale Water Rate
363 for that year. In each of the subsequent four years, the Wholesale M&O Cost (M) shall
364 be escalated by the consumer price index for all Urban Consumers (CPI-U)
365 (Seattle/Tacoma/Bremerton metropolitan area) December to December or a comparable
366 index, if that index is unavailable; provided that in any year, the District may, at its
367 discretion, forego escalation of cost according to the index and determine the actual
368 Wholesale M&O Costs that year.
369

370 5. Power Costs attributable to the Wholesale Customers shall be determined
371 when the Wholesale Water Rate is re-calculated and shall be equal to the following:
372 $P = (\text{District's prior calendar year cost of power at Wholesale Facilities identified on}$
373 $\text{Exhibit B, and as Exhibit B may be amended}) \times (\text{the Wholesale Customers'}$
374 $\text{combined prior calendar year volumetric use of water as recorded on Master Meters}$

identified on Exhibit B, and as Exhibit B may be amended) divided by (the District's prior calendar year volumetric use of water as recorded at the District's Master Meters at the Evergreen Way Pump Stations.

6. The CFI component of the Wholesale Water Rate shall be determined by the District after a review of the District's 5-year capital improvement plan by the Wholesale Committee. The Wholesale Committee shall approve CFI funding for each year of the five (5) year capital improvement plan, after considering the different financial and rate impacts of funding wholesale projects with cash or by debt and such other factors deemed relevant by the Committee.

7. Annually, before the Wholesale Water rate is developed, the Wholesale Committee shall review and approve what, if any, Other Program Funding, including costs incurred by the District that are not otherwise included in the Wholesale Water Cost, should be allocated to Wholesale Customers and included in the Wholesale Water Rate. Approval will require a majority vote of the Wholesale Customers plus District.

8. The District shall establish a separate wholesale capital improvement sinking fund (reserve) to segregate and account for certain revenues received from the Wholesale Customers as identified in this Agreement. The sinking fund shall contain the balance in the bond reserve fund as identified in the current wholesale contract. The District shall deposit into the wholesale capital improvement sinking fund all revenues received from:

A. The Cash (Rate) Funded Improvements (CFI) component of the Wholesale Water Rate; and

B. Wholesale Water Rates to meet the minimum debt service coverage ratio requirements (rate covenant).

Interest earned on the balance of the Wholesale Capital Improvement Sinking Fund shall be retained in the sinking fund and credited to the sinking fund on a monthly

406 basis in a manner consistent with the methodology the District uses to allocate interest to
407 its funds.

408 Except as otherwise provided, all funds deposited into the Wholesale Capital
409 Improvement Sinking Fund shall be applied to the cost of wholesale capital improvement
410 projects undertaken by the District. On the recommendation of the Wholesale Committee
411 the District may use these funds to pay the cost of any other wholesale-related activity
412 (e.g. early buy-down of debt, buy-down a rate adjustment, rate transition, etc.).
413

414 9. Whenever a component of the Wholesale Water Cost is determined by
415 meter readings and some condition (e.g. meter failure, emergency conditions [e.g.
416 earthquake]) would make the use of those readings unreasonable or inequitable to the
417 District or to the Wholesale Customers, the District shall use its best and reasonable
418 judgment to “normalize” the volumetric usage data for purposes of establishing the
419 affected component of the Wholesale Water Rate.
420

421 10. The District may utilize District funds to finance Wholesale Facility
422 improvements, the funding size of which is not practical for issuance of bonds, and the
423 Cash (Rate) Funded Wholesale Facility Improvements option has not been approved by
424 the Wholesale Committee. The capital funds necessary for the improvement would be
425 provided by the District subject to reimbursement through wholesale water rates for a
426 term not to exceed ten (10) years. The rate would be determined based upon the average
427 rate of investments for District funds for the prior year. The rate may be adjusted
428 annually utilizing the District’s annual investment rate for the prior year. The District
429 also reserves the right to terminate this funding option at any time during the term by
430 adding the remaining funds yet to be paid to a larger bond issue. If so elected, the
431 wholesale portion would be the pro rata share of the bond issue at the terms of the bond
432 issue.
433
434
435

436 **SECTION XII. - BILLING & PAYMENT**
437

438 The District shall bill the Customer for water supplied under this Agreement on regular
439 monthly intervals.

440 The Master Meters shall be read and recorded on or about the last normal work day of the
441 month in which the service was furnished. Billing to the Customer shall be made by the 10th day of
442 the month following, and payment to the District is due by the 30th day of the month in which the
443 statement is received. If any payment or portion thereof due the District shall remain unpaid for
444 25 days following its due date, the Customer shall be charged with and pay to the District interest
445 on the amount unpaid from its due date until paid at the rate of eight (8)% per annum.

446 If any or all of a bill is in dispute, the Customer shall pay the amount as billed and both
447 the District and the Customer shall agree to the time line to resolve the disputed amount. If any
448 material error, an amount greater than \$1,000 per month is discovered in the rate calculation,
449 billing, payment, interest allocation, or any other calculation or assumption, the District shall
450 correct the error retroactively from the date of receipt of notice of the error backwards for a
451 period of up to three (3) years or as mutually agreed. The \$1,000 amount shall be adjusted for
452 inflation every five (5) years with CPI-U as described in Section XI of this agreement.

453
454 **SECTION XIII. - TERM & EXPIRATION**
455

456 (1) The term of this Agreement shall be from its effective date until January 1, 2055.
457 The Parties may renew this Agreement by mutual written agreement upon such terms and
458 conditions as the Parties may later agree.

459 (2) If the Customer shall cease to take water from the District without the District's
460 consent, the Customer shall remain liable for its proportionate share of the then existing wholesale
461 bonded indebtedness issued before January 1, 2055 as may at that time be determined including
462 credits for certain payments and recognition given to the growth experienced in the Customer, District,
463 and all other Wholesale Customers. This liability shall continue only until such time as all or
464 part of the water supply no longer taken by the Customer from the District is sold by the District
465 to another party. In that event, liability shall be reallocated, in whole or in part, to the new
466 customer.

(3) If the District shall cease to supply water to the Customer without the Customer's consent, the Customer shall cease to be liable for its proportionate share of the wholesale bonded indebtedness as described in Subsection 2 above.

SECTION XIV. - NOTICE OF NEGOTIATION

The Customer shall receive timely written notice of negotiation with City of Everett for a rate change or additional water and the Customer shall have the right to be present at such meetings.

SECTION XV. - FORCE MAJEURE AND CHANGES IN LAW

Neither Party hereto shall be considered to be in default in respect to any obligations hereunder if prevented from fulfilling such obligations due to conditions beyond their reasonable control or due to changes in state or federal law. If a Party is unable to perform in whole or in part because of such condition or change in the law, the Party shall diligently and promptly take reasonable steps to allow it to perform. The Parties expressly acknowledge and agree that the inability or preclusion of the City of Everett to perform, in whole or material part, the Everett Supply Agreement caused by an order or directive of governmental authority or a court with jurisdiction shall constitute a force majeure or change in law event hereunder.

SECTION XVI. - LEGAL RELATIONS

Each Party shall defend, hold harmless, and indemnify the other from any and all claims, demands, suits, and judgments arising out of its conduct. If, and to the extent, the Parties are both liable to a third party claimant, each Party shall be responsible to the extent of its fault, and shall defend, hold harmless, and indemnify the other for its fault. The foregoing indemnity is specifically and expressly intended to constitute a waiver of each Party's immunity under Washington's Industrial Insurance Act, RCW Title 51, but only with respect to the other Party only, and only to the extent necessary to provide each Party with a full and complete indemnity of claims made by the other Party's employees. The Parties acknowledge that these provisions were specifically negotiated and agreed upon by them.

SECTION XVII. - DISPUTE RESOLUTION

The Parties are committed to working cooperatively in resolving all matters related to this Agreement and achieving its intent and purpose. If a dispute should arise, the Parties agree to meet on an informal basis within fourteen (14) calendar days after receipt of written notice of the dispute submitted by a Party to attempt to resolve the dispute.

If the Parties are unable to resolve the dispute on an informal basis within thirty (30) days, the Parties agree they shall utilize mediation. Each Party shall be responsible for the costs of their own legal representation and pro rata cost of mediator.

Any dispute arising under this Agreement that is not resolved pursuant to the mediation process may, upon mutual agreement of the Parties, if such agreement occurs within twenty (20) calendar days of the failure of the Parties to reach resolution through mediation, be resolved by binding arbitration by a single arbitrator. Within seven (7) calendar days of the date the Parties agree to arbitration, each Party shall provide the other Party with the names of three (3) neutral arbitrators having experience in the subject matter of the dispute and in arbitrating disputes. The Parties will thereafter attempt in good faith to select an arbitrator from this panel of six (6) potential arbitrators.

If the Parties are unable to agree upon a single arbitrator within twenty (20) calendar days from the date the Parties agree to binding arbitration, then each Party shall designate one (1) arbitrator from its panel of three (3) arbitrators. The two (2) designated arbitrators shall then select a third arbitrator from the remaining arbitrator panel members, and this third arbitrator shall act and serve as the single arbitrator for the dispute. The Parties shall equally split the arbitrator's fee and all arbitration expenses. The prevailing party at arbitration shall be entitled to an award by the arbitrator of its attorneys' fees and costs at the arbitrator's discretion.

The Parties agree that this dispute resolution process shall precede any action in a judicial or quasi-judicial tribunal.

The Parties also agree that at all times pending resolution of the dispute, the Parties shall continue to perform their respective duties and obligations in accordance with the terms and conditions of this Agreement. The intent of the Parties is to preserve the status quo under the Agreement. By way of illustration and not limitation, the Parties wish to assure uninterrupted water service and compliance with the payment provisions of Section XII.

529 **SECTION XVIII. - GOVERNING LAW AND VENUE**

530
531 This Agreement shall be governed by and construed in accordance with the laws of the
532 state of Washington. Any lawsuit or judicial action or proceeding arising out of or relating to
533 this Agreement that could not be resolved through Dispute Resolution, shall be heard in the
534 Superior Court of the State of Washington in and for Snohomish County.

535
536 **SECTION XIX. - NO THIRD PARTY BENEFICIARIES**

537
538 Except as expressly set forth in this Agreement, nothing in this Agreement is intended
539 to confer upon any person or entity, other than the Parties hereto, any rights, benefits, or
540 obligations. No such third-party shall have any right to enforce any of the provisions of this
541 Agreement unless expressly stated otherwise herein.

542
543 **SECTION XX. - LIMITATION ON DAMAGES**

544
545 Notwithstanding any other provision of this Agreement, neither the District nor the
546 Customer shall be liable to the other under or pursuant to this Agreement for indirect,
547 incidental, special, exemplary, punitive, or consequential damages, including but not limited
548 to damages for lost profits, revenues or benefits, loss of property use, the cost of capital, or
549 the cost of purchased or replacement water.

550
551 **SECTION XXI. - GENERAL PROVISIONS**

552
553 (1) Waiver: A waiver by either Party of any terms or conditions of this
554 Agreement shall not be deemed or construed to be a waiver of any other term or condition,
555 nor shall the waiver of any breach be deemed or construed to constitute a waiver of any
556 subsequent breach, whether of the same or any other term or condition of this Agreement.

557 (2) Assignment: Except where one of the Parties merges, consolidates or
558 combines with another entity neither this Agreement nor any of the rights, interests or
559 obligations created hereunder may be assigned by either Party without the written consent of

the other Party. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the respective Parties.

(3) Notices: Any notices required or permitted to be given hereunder shall be given in writing and shall be delivered (a) in person, (b) by certified mail, postage prepaid, return receipt requested, (c) by electronic transmission in the form of email or facsimile, or (d) by a commercial overnight courier that guarantees next day delivery and provides a receipt, and such notices shall be addressed as follows:

To the Customer:

Public Works Director
City of Edmonds
7110 210th Street SW
Edmonds, WA 98026
Fax: 425-774-6057

To the District:

General Manager
Alderwood Water & Wastewater District
3626 - 156th Street SW
Lynnwood, Washington 98087
Fax: 425-742-4562

or to such other address designated in writing by the addressee.

(4) Entirety: All prior negotiations and agreements between the parties hereto relating to the subject matter hereof are merged into and superseded by this Agreement, which shall constitute the entire agreement between the Customer and the District concerning the sale of water to the Customer.

(5) Authority: Each Party represents and warrants that it has the power and legal authority to enter into this Agreement. The individual(s) executing this Agreement on behalf of the respective Party represents and warrants that such individual has the power and authority to do so.

591 (6) Effective Date: This Agreement shall become effective ("Effective Date")
592 upon the date of the expiration or termination of the existing contract for wholesale water
593 supply between the Parties dated the 20th day of September 2010.

594 (7) Attorneys' Fees and Costs: In the event that either Party commences any legal
595 action or proceeding relating to the provisions or enforcement of this Agreement, the
596 prevailing party shall be entitled to receive, and the non-prevailing party shall pay, its
597 reasonable attorneys' fees and costs, including those incurred in any appeal.

598 (8) Exhibits Incorporated by Reference: Any exhibits attached to this Agreement
599 are fully incorporated herein by this reference.

600 (9) Titles to sections and subsections in this Agreement are for reference purposes
601 only and shall have no substantive effect.

602 (10) In the event of a material breach or default of this Agreement by either of the
603 Parties, the Parties acknowledge that it may be difficult to measure the resulting damages and
604 that monetary damages may not provide a complete or adequate remedy. Accordingly, the
605 non-defaulting Party, in addition to damages and any other relief sought or recovered, shall
606 be entitled to seek injunctive relief and the specific performance of the terms and conditions
607 of this Agreement.

608 (11) If any term, condition or provision of this Agreement is determined to be void,
609 unenforceable or limited in its application or effect in a legal proceeding, such determination
610 shall not affect any other provisions in this Agreement and all other provisions shall remain
611 in full force and effect.

612 (12) Any new water Wholesale Customer Agreement utilizing the same Wholesale
613 Water Facilities as included in the Agreement, shall have the same terms and conditions as
614 this Agreement, with the exclusion of Exhibits A, D and E.

622 CITY OF EDMONDS
623 A Municipal Corporation

624
625
626 By: Wm Coon

627 Its: Mayor

628 Date: 9-20-10

629

630

631 ATTEST:

632 Sandra L. Chase

633 City Clerk

634

635 APPROVED AS TO FORM:

636 W Scott Snyder

637 City Attorney

638

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ALDERWOOD WATER & WASTEWATER
DISTRICT

A Municipal Corporation

By: Paul D. McIntyre

Its: BOARD PRESIDENT

Date: SEPTEMBER 7, 2010

**ALDERWOOD WATER & WASTEWATER DISTRICT
AND CITY OF EDMONDS
WHOLESALE WATER SUPPLY AGREEMENT**

EXHIBIT A – QUANTITY OF WATER TO BE PURCHASED

All quantities in Million Gallons per Day (MGD)

YEAR	Average Daily Demand	Peak Day Demand
2010	3.6	7.1
2020	3.6	7.2
2050	4.6	9.0
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**ALDERWOOD WATER & WASTEWATER DISTRICT
AND CITY OF EDMONDS
WHOLESALE WATER SUPPLY AGREEMENT**

EXHIBIT B - WHOLESALE FACILITIES

The water lines including transmission facilities are shown on a separate map exhibit.

The following is a list of the wholesale facilities referenced in the Agreement, in addition to the water lines shown on the separate map.

Evergreen Way Pump Station Site (6003 Evergreen Way, Everett)

- Pump Station No. 1
- Pump Station No. 2

Maintenance and Operation Site (15204 35th Avenue W, Lynnwood)

- Reservoir No. 1
- Chlorination Facility
- Ancillary valves and piping associated with the above assets

Administration Site (3626 156th Street SW, Lynnwood)

- Reservoir No. 2
- Reservoir No. 3
- Chlorination Facility
- Ancillary valves and piping associated with the above assets

Edmonds Master Meter Site (168th Street SW and 62nd Avenue W, Edmonds)

- Master Meter
- Vault and ancillary assets

Lynnwood Master Meter Site (Spruce Way and 164th Street SW, Lynnwood)

- Master Meter
- Vault and ancillary assets

Mountlake Terrace Master Meter Site (212th Street SW and 44th Avenue W, Mountlake Terrace)

- Master Meter
- Vault and ancillary assets
- (Emergency supply at 38th Avenue W and 228th Street SW)

Mukilteo Water & Wastewater District Meter Site (Harbour Point Boulevard and St. Andrews Drive; and Beverly Park Road and Center Road, Mukilteo)

- Master Meter
- Vault and ancillary assets

**ALDERWOOD WATER & WASTEWATER DISTRICT
AND CITY OF EDMONDS
WHOLESALE WATER SUPPLY AGREEMENT**

EXHIBIT C - REGIONAL FACILITIES

The regional water lines and larger water transmission facilities are shown on a separate map exhibit.

The following list contains additional regional facilities as referenced in the Agreement.

Evergreen Way Pump Station Site (6003 Evergreen Way, Everett)

- Leased Site
- Pump Station No. 1
- Pump Station No. 2

Maintenance and Operation Site (15204 35th Avenue W, Lynnwood)

- Site
- Reservoir No. 1
- High Tank No. 1
- High Tank No. 2
- Booster Pump Station
- Chlorination Facility
- Ancillary valves and piping associated with the above assets
- Maintenance and Operation Administration Building
- Shop Facility
- Warehouse Facilities
- Material Storage Facilities

Administration Site (3626 156th Street SW, Lynnwood)

- Site
- District Administration Building
- Reservoir No. 2
- Reservoir No. 3
- Chlorination Facility
- Ancillary valves and piping associated with the above assets

**ALDERWOOD WATER & WASTEWATER DISTRICT
AND CITY OF EDMONDS
WHOLESALE WATER SUPPLY AGREEMENT**

**EXHIBIT D – CUSTOMERS WATER SERVICE AGREEMENT TO OTHER
SUPPLIERS**

NONE IDENTIFIED

**ALDERWOOD WATER & WASTEWATER DISTRICT
AND CITY OF EDMONDS
WHOLESALE WATER SUPPLY AGREEMENT**

EXHIBIT E – MASTER METER LOCATION

168th Street SW and 62nd Avenue W